



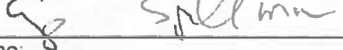
Amendment No. 1
of
Contract No. NS170000038
for
Parts & Repair Services for Toro Commercial Equipment
between
Professional Turf Products, LP
and the
City of Austin


- 1.0 The City hereby exercises this extension option for the subject contract. This extension option will be June 27, 2019 to June 26, 2020. Two options remain.
- 2.0 The total contract amount is increased by \$134,000.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 06/27/2017 – 06/26/2019	\$268,000.00	\$268,000.00
Amendment No. 1: Option 1 06/27/2019 – 06/26/2020	\$134,000.00	\$402,000.00

- 3.0 MBE/WBE goals were not established for this contract
- 4.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 5.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature: 
Printed Name: _____
Authorized Representative
GARY SPILLMAN

Signature: 
Erin D'Vincent, Purchasing Supervisor
City of Austin
Purchasing Office

Professional Turf Products, LP
1010 N. Industrial Blvd
Euless, TX 76039
yle Vanlandingham
spillman@proturf.com



City of Austin

Purchasing Office

P.O. Box 1088, Austin, TX 78767

June 26, 2017

Professional Turf Products, LP
George Spillman
Sr. Sales Coordinator
1010 N. Industrial Blvd.
Euless, TX 76039
spillmang@proturf.com

Dear Mr. Spillman:

The Austin City Council approved the execution of a contract with your company for parts and repair services for Toro commercial turf and lawn equipment in accordance with the referenced solicitation.

Responsible Department:	Fleet Services
Department Contact Person:	Hazel Black
Department Contact Email Address:	Hazel.Black@austintexas.gov
Department Contact Telephone:	512-974-1751
Project Name:	Parts & Repair Services for Toro Commercial Equipment
Contractor Name:	Professional Turf Products, LP
Contract Number:	MA 7800 NS170000038
Contract Period:	24 Months
Dollar Amount	\$268,000 Initial Term
Extension Options:	Three 12-Month Options of \$134,000 Each
Requisition Number:	16122200172
Agenda Item Number:	36
Council Approval Date:	03/23/2017

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Marian Moore
Procurement Specialist II
City of Austin
Purchasing Office

**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)
AND
PROFESSIONAL TURF PRODUCTS, LP (“Contractor”)
FOR
PARTS & REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND LAWN EQUIPMENT
MA 7800 NS170000038**

This Contract is between Professional Turf Products, LP having offices at 1010 N. Industrial Blvd., Euless, TX 76039 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City (“Effective Date”).

1.1 This Contract is composed of the following documents:

- 1.1.1 This document
- 1.1.2 Exhibit A - The City’s Standard Purchase Terms & Conditions
- 1.1.3 Exhibit B - Supplemental Purchase Provisions
- 1.1.4 Exhibit C - Scope of Work
- 1.1.5 Exhibit D - Non-Discrimination and Non-Retaliation Certification
- 1.1.6 Exhibit E - Non-Suspension or Debarment Certification
- 1.1.7 Exhibit F - Price Sheet

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 This document
- 1.2.2 The City’s Standard Purchase Terms & Conditions as referenced in Section 1.1.2
- 1.2.3 The Supplemental Purchase Provisions as referenced in Section 1.1.3
- 1.2.4 The Scope of Work as referenced in Section 1.1.4
- 1.2.5 The Non-Discrimination and Non-Retaliation Certification as referenced in Section 1.1.5
- 1.2.6 The Non-Suspension or Debarment Certification as referenced in Section 1.1.6
- 1.2.7 The Price Sheet as referenced in Section 1.1.7

1.3 Term of Contract. The Contract will be in effect for an initial term of twenty-four (24) months and may be extended thereafter for up to three (3) twelve (12) month extension option(s), subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in the Supplemental Purchase Provisions for additional Contract requirements.

1.4 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$268,000 for the initial Contract term and \$134,000 for each extension option and according to the Price Sheet. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

1.5 Quantity of Work. There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the parties have caused a duly authorized representative to execute this Contract on the date set forth below.

PROFESSIONAL TURF PRODUCTS, LP



Signature

CITY OF AUSTIN



Signature

George Spillman

Printed Name of Authorized Person

JONATHAN DALCHAU

Printed Name of Authorized Person

GR. Sales Coordinator

Title

PROCUREMENT SPECIALIST IV

Title

June 23, 2017

Date

6/27/2017

Date

- Exhibit A – The City's Standard Purchase Terms & Conditions
- Exhibit B – Supplemental Purchase Provisions
- Exhibit C – Scope of Work
- Exhibit D – Non-Discrimination and Non-Retaliation Certification
- Exhibit E – Non-Suspension or Debarment Certification
- Exhibit F – Price Sheet

EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City

EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. **WORKFORCE**

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

11. **COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. **INVOICES:**

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

13. **PAYMENT:**

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

14. **TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. **FINAL PAYMENT AND CLOSE-OUT:**

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. **SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. **AUDITS and RECORDS:**

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. Records Retention:
 - i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
 - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
 - iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

18. **SUBCONTRACTORS:**

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. **WARRANTY-PRICE:**

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.
 - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

30. **DELAYS:**

- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. **INDEMNITY:**

- A. Definitions:
 - i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
 - ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

32. **INSURANCE:** (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

- A. **General Requirements.**
 - i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
 - ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the

EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY**: In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

48. **DISPUTE RESOLUTION:**

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

51. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS

Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

52. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

54. **EQUAL OPPORTUNITY**

A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

55. **INTERESTED PARTIES DISCLOSURE**

As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

56. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

**EXHIBIT A
CITY OF AUSTIN
PURCHASING OFFICE
STANDARD PURCHASE TERMS AND CONDITIONS**

- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
 - ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
 - iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
 - iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
 - v. "Foreign end product" means an end product other than a domestic end product.
 - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".

**EXHIBIT B
SUPPLEMENTAL PURCHASE PROVISIONS
PARTS AND REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND GOLF COURSE EQUIPMENT
MA 7800 NS170000038**

The following Supplemental Purchasing Provisions apply:

1. **INSURANCE:** Insurance is required for this Contract.

A. **General Requirements:** See Exhibit A, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award.
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767
- v. Applicable to all insurance policies: If coverage is underwritten on a claims-made basis, the retroactive date shall be coincident with or prior to the date of this Contract and the certificate of insurance shall state that the coverage is claims made and the retroactive date. The Contractor shall maintain continuous coverage for the duration of this Contract and for not less than twenty-four (24) months following final completion of the work. Coverage, including any renewals, shall have the same retroactive date as the original policy applicable to the work. The Contractor shall, on at least an annual basis, provide the OWNER with a certificate of insurance as evidence of such insurance.

B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:

EXHIBIT B
SUPPLEMENTAL PURCHASE PROVISIONS
PARTS AND REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND GOLF COURSE EQUIPMENT
MA 7800 NS170000038

- (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- iv. **Garage Liability Coverage:** The Contractor may provide Garage Liability coverage in place of the Commercial General Liability and Business Automobile Liability policies. The Garage Liability policy shall provide a minimum limit of liability of \$500,000 Auto Only / \$500,000 Aggregate other than Auto. Coverage shall be provided for all owned, hired, and non-owned vehicles.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation
 - (b) Thirty (30) days Notice of Cancellation
 - (c) The City of Austin listed as an additional insured
- v. **Property Coverage:** The Contractor shall provide all risk physical loss coverage for the vehicle and equipment in the care, custody, and control of the Contractor. Coverage shall continue until the work is accepted by the City. The limit of coverage required is the total estimated actual cash value of vehicles/equipment in the Contractor's care, custody, and control at any given time. The minimum limit of liability shall be \$100,000 with the ability to be increased to \$500,000 during the Contract term.
 - (1) City of Austin shall be added as a loss payee.
- vi. **Garagekeepers Liability:** The Contractor may provide Garagekeepers Liability for the required property coverage for vehicles in the care, custody, and control of the Contractor. Comprehensive and collision coverage shall be provided on a Legal Liability basis. The limit of coverage required is the total estimated actual cash value of vehicles in the Contractor's care, custody, and control at any given time. The minimum limit of liability shall be \$100,000 with the ability to be increased to \$500,000 during the Contract term.
 - (1) City of Austin shall be added as a loss payee.
- C. **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

2. TERM OF CONTRACT

**EXHIBIT B
SUPPLEMENTAL PURCHASE PROVISIONS
PARTS AND REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND GOLF COURSE EQUIPMENT
MA 7800 NS170000038**

- A. The Contract shall be in effect for an initial term of 24-months and may be extended thereafter for up to three (3) additional 12-month periods, subject to the approval of the Contractor and the City Purchasing Officer or designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).
- C. Upon written notice to the Contractor from the City's Purchasing Officer or designee and acceptance of the Contractor, the term of this contract shall be extended on the same terms and conditions for an additional period as indicated in paragraph A above.
- D. Prices are firm and fixed for the first 12-months. Thereafter, price changes are subject to the Economic Price Adjustment provisions of this Contract.

3. POST-AWARD

- A. The Contractor may be required to attend a post award meeting with City personnel within thirty (30) calendar days after Contract award. The purpose of the meeting is to discuss the terms and conditions of the contract.
- B. The City may perform site visits during the term of the Contract to verify that the Contractor or the Contractor's Subcontractor maintains the appropriate facilities, equipment, inventory, licenses, registrations, permits, and qualified personnel to perform according to the Exhibit C - Scope of Work. The Contractor, or the Contractor's Subcontractor shall furnish, or cause to be furnished, without additional charge, all reasonable assistance to the City to facilitate the site visit.

4. QUANTITIES

The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.

5. PICKUP AND / OR DELIVERY REQUIREMENTS

- A. Pickups and deliveries shall be made as specified in Exhibit C - Scope of Work, after the order is placed.
- B. Unless requested by the City, pickups and deliveries shall not be made on City-recognized legal holidays (reference paragraph 51 in Exhibit A – Standard Purchase Terms & Conditions) or other times outside of normal City business hours Monday through Friday between the hours of 7:00 AM through 5:00 PM.
- C. For Parts:
 - i. All orders must be shipped complete unless arrangements for partial shipments are made in advance.
 - ii. The Contractor shall provide, with each delivery, a Shipping or Delivery Ticket showing the description of each item, quantity, and unit price.
 - iii. No additional delivery charges (FedEx, UPS, etc.) will be paid by the City for any shipment unless the delivery order specifically states "Code Red" and "Code Red" is noted on the invoice. (NOTE: The term "Code Red" means that there is a critical need for the shipment such that the City is willing to pay expedited shipping charges for delivery as specified in the Exhibit C - Scope of Work).
- D. For Repairs:
 - i. The Contractor shall provide, with each delivery, an itemized invoice with the following information:

**EXHIBIT B
SUPPLEMENTAL PURCHASE PROVISIONS
PARTS AND REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND GOLF COURSE EQUIPMENT
MA 7800 NS170000038**

- Date the City authorized repairs
- List of repairs made
- Date repairs were completed
- Itemized list of parts and products used for the repairs
- Number of labor hours associated with the repairs
- The vehicle or piece of equipment identification number (license plate, Vehicle Identification Number (VIN) or unit number)

6. INVOICES and PAYMENT

- A. Invoices shall contain a unique invoice number and the information required in Exhibit A – Standard Purchase Terms & Conditions, paragraph 12, entitled “Invoices.” Additionally, invoices shall include a unique Purchase or Delivery Order Number and the following information, as applicable: pricing, the number of labor hours, equipment and/or part numbers, descriptions and quantities, the vehicle or piece of equipment identification number (license plate, VIN or unit number), credit for core charge for core exchanges, documentation to support all parts charged to the City, the Contractor’s business name, “remit to” name and address, and the taxpayer identification number. The taxpayer identification number on the invoice must exactly match the information in the Vendor’s registration with the City. Invoices received without all required information cannot be processed and will be returned to the Contractor.
- B. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor’s invoice. The City cannot process payments to or for a Third Party on behalf of the Contractor until the Third Party has been approved by the City and included in the Vendor’s registration with the City.
- C. Invoices shall be mailed to the Service Center that placed the order.
- D. Monthly statements for Fleet Services shall be mailed to the below address:

	City of Austin
Department	Fleet Services
Attn:	Accounts Payable
Address	1190 Hargrave Street
City, State Zip Code	Austin, TX 78702

- E. The Contractor agrees to accept payment by credit card, check, or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.
- F. Final invoices at the end of the Contract must be received at the Service Center that placed the order within thirty (30) calendar days after the Contract expiration date to be considered for payment. No exceptions to this 30-day submission requirement will be considered.

7. VERIFICATION OF CONTRACTOR’S LABOR HOURS AND PARTS PRICING

- A. Labor hours must be based on published industry standards where they apply. In areas where such standards have not been published, the City reserves the right to restrict labor hours based on historic experience for like repairs.
- B. City personnel will review invoices to determine the accuracy of charges invoiced. The review will be performed using Exhibit F - Price Sheet, in effect at the time of contract effective date, revisions approved by the City, and the percentage mark up or discount as indicated on the Price Sheet.

**EXHIBIT B
SUPPLEMENTAL PURCHASE PROVISIONS
PARTS AND REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND GOLF COURSE EQUIPMENT
MA 7800 NS170000038**

- C. If during the review the pricing is found to be different, the Contractor shall reimburse the City for the amount overcharged within thirty (30) calendar days after written notification from the Contract Manager.

8. RESTOCKING FEES

- A. The Contractor may bill the City restocking fees (limited to 5% of the total cost of the item or items returned) for parts that are ordered by the City under the Contract and returned for refund; except that no restocking fee shall be billed for any parts returned within thirty (30) calendar days after receipt or for any parts returned during a quarterly stock lift. The Contractor is not obligated to accept for refund any part that is not resalable and/or not in the same condition as when purchased.
- B. The City will permit a restocking fee greater than 5% only in the event that the manufacturer charges the Contractor a restocking fee greater than 5%. In order to qualify for the higher restocking fee, the Contractor shall be required to submit written evidence of the manufacturer's higher restocking fee.

9. UNUSED INVENTORY (STOCK LIFT)

- A. The City may require a stock lift on a quarterly basis. When required, the Contractor shall pick up and credit the City's account for items purchased during the Contract term which have not been used or have become obsolete for the City's needs, provided that these items are in the original cartons and in marketable condition. The amount credited to the City's account shall be the original purchase price for the items.
- B. The date for the quarterly stock lift shall be mutually agreed upon between the Contractor and the Fleet Services Materials Control Manager or designee.
- C. No restocking fees will be assessed for parts returned during a quarterly stock lift.
- D. At the end of the final Contract term, the Contractor shall pick up and refund the City for items purchased during the Contract term which were not used, provided the items are in the original cartons and in marketable condition. The amount refunded to the City shall be the original purchase price for the items less the restocking fee as outlined in the Restocking Fees provision above.

10. PRICING REQUIREMENTS - SPECIFIED ITEMS

- A. The Specified Items listed in Exhibit F – Price Sheet represent the most commonly purchased items. This list of parts is an annual estimate of Specified Parts that may be purchased under the resultant contract.
- B. The pricing listed for the Hourly Labor Rates shall be firm and fixed for the first twelve (12) months of the contract. These prices may only be adjusted on the anniversary date of the Contract solely for the purpose of accommodating changes in the Contractor's direct costs. Any approved adjustment in the pricing of the Hourly Labor Rates shall remain firm for the next twelve (12) month period of the contract.
- C. The pricing listed for the Specified Items shall be reviewed and confirmed in writing between the City and the Contractor annually for any pricing changes on or around November 1st of the contract year solely for the purpose of accommodating changes in the Contractor's direct costs associated with Toro price list revisions. Any documented adjustment in the pricing of the Specified Items shall remain firm for the next twelve (12) month period of the contract ending October 31st.
- D. Changes resulting from verifiable cost trends shall be made in accordance with the Economic Price Adjustment provision.

11. PUBLISHED PRICE LISTS

- A. Contractor invoices shall be based on the percentage discount or markup to manufacturer's Price List(s) as indicated on Exhibit F - Price Sheet.

**EXHIBIT B
SUPPLEMENTAL PURCHASE PROVISIONS
PARTS AND REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND GOLF COURSE EQUIPMENT
MA 7800 NS170000038**

- i. The percentage discount or markup to cost shall be fixed throughout the term and subsequent renewal periods of the Contract, and are not subject to increase.
- ii. Parts within each manufacturer's product line shall be priced by taking the stated list price and applying that percentage discount or markup and any additional manufacturer discounts offered at time of order.

- B. The Price List(s) may be superseded or replaced during the Contract term only if price revisions are the result of the manufacturer's official price list revision. Written notification from the Contractor of price changes, along with two (2) copies of the documentation supporting the price revision must be submitted to the Buyer in the Purchasing Office with the effective date of change to be at least 30-calendar days after written notification. The City reserves the right to refuse any list revision.
- C. Failure to submit written notification of price list revisions will result in the rejection of new prices being invoiced. The City will only pay invoices according to the last approved price list.

12. WORKFORCE SECURITY CLEARANCE AND IDENTIFICATION (ID)

- A. Access to any City facility by the Contractor, all subcontractors and their employees will be strictly controlled at all times by the City. Contractor employees may be asked to present a photo ID when on City property.
- B. Where denial of access by a particular person may cause the Contractor to be unable to perform any portion of the work of the contract, the Contractor shall so notify the City's Contract Manager, in writing, within ten (10) days of the receipt of notification of denial.
- C. Contractor personnel will be required to check in at the Service Writer's desk when entering or leaving all City facilities. Failure to do so may be cause for removal of Contractor Personnel from the worksite, without regard to Contractor's schedule.
- D. The Contractor shall comply with all other security requirements imposed by the City and shall ensure that all employees and subcontractors are kept fully informed as to these requirements.

13. ECONOMIC PRICE ADJUSTMENT

- A. **Price Adjustments:** Prices shown in this Contract shall remain firm for the first twelve (12) calendar months of the Contract. After that, in recognition of the potential for fluctuation of the Contractor's cost, a price adjustment (increase or decrease) may be requested by either the City or the Contractor on the anniversary date of the Contract or as may otherwise be specified herein. The percentage change between the contract price and the requested price shall not exceed the percentage change between the specified index in effect on the date the solicitation closed and the most recent, non-preliminary data at the time the price adjustment is requested. The requested price adjustment shall not exceed twenty-five percent (25%) for any single line item and in no event shall the total amount of the contract be automatically adjusted as a result of the change in one or more line items made pursuant to this provision. Prices for products or services unaffected by verifiable cost trends shall not be subject to adjustment.
- B. **Effective Date:** Approved price adjustments will go into effect on the first day of the upcoming renewal period or anniversary date of contract effective date and remain in effect until contract expiration unless changed by subsequent amendment.
- C. **Adjustments:** A request for price adjustment must be made in writing and submitted to the other Party prior to the yearly anniversary date of the Contract; adjustments may only be considered at that time unless otherwise specified herein. Requested adjustments must be solely for the purpose of accommodating changes in the Contractor's direct costs. Contractor shall provide an updated price listing once agreed to adjustment(s) have been approved by the parties.

**EXHIBIT B
SUPPLEMENTAL PURCHASE PROVISIONS
PARTS AND REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND GOLF COURSE EQUIPMENT
MA 7800 NS170000038**

D. **Indexes:** In most cases an index from the Bureau of Labor Standards (BLS) will be utilized; however, if there is more appropriate, industry recognized standard then that index may be selected.

i. The following definitions apply:

- (1) **Base Period:** Month and year of the original contracted price (the Contract effective date).
- (2) **Base Price:** Initial price quoted, proposed and/or contracted per unit of measure.
- (3) **Adjusted Price:** Base Price after it has been adjusted in accordance with the applicable index change and instructions provided.
- (4) **Change Factor:** The multiplier utilized to adjust the Base Price to the Adjusted Price.
- (5) **Weight %:** The percent of the Base Price subject to adjustment based on an index change.

ii. **Adjustment-Request Review:** Each adjustment-request received will be reviewed and compared to changes in the index(es) identified below. Where applicable:

- (1) Utilize final Compilation data instead of Preliminary data.
- (2) If the referenced index is no longer available shift up to the next higher category index.

iii. **Index Identification:** :

Weight % or \$ of Base Price: 100%	
Database Name: Consumer Price Index	
Series ID: CUUR0000SETD03	
<input checked="" type="checkbox"/> Not Seasonally Adjusted	<input type="checkbox"/> Seasonally Adjusted
Geographical Area: U.S. city average	
Description of Series ID: Motor vehicle repair	
This Index shall apply to the following items of the Bid Sheet / Cost Proposal: Repairs	

E. **Calculation:** Price adjustment will be calculated as follows:

Single Index: Adjust the Base Price by the same factor calculated for the index change.

Index at time of calculation
Divided by index on solicitation close date
Equals Change Factor
Multiplied by the Base Rate
Equals the Adjusted Price

F. The City, as its sole discretion, may consider approving an adjustment on fully documented market increases.

14. PERFORMANCE

In the event that the Contractor cannot provide the deliverables required by this Contract, the Contractor must supply deliverables from other sources at the Contract price in accordance with the terms and conditions of the Contract. If the Contractor delays in the above, the City reserves the right to purchase the deliverables on the open market and charge the Contractor the difference between the Contract price and the purchase price.

15. NON-COMPLIANCE

**EXHIBIT B
SUPPLEMENTAL PURCHASE PROVISIONS
PARTS AND REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND GOLF COURSE EQUIPMENT
MA 7800 NS170000038**

The City will not tolerate non-compliance to the City's terms and conditions and Exhibit C - Scope of Work as stated in the Contract. The City will be the sole judge evaluating any unacceptable performance under the Contract. The City will notify the Contractor of any unacceptable performance in writing. The Contractor shall prepare a written response to the Contract Manager within two (2) working days after receipt of the City's notification unless a longer period is specified in the City's written notice. The Contractor's response shall include action taken to correct and prevent unacceptable performance from reoccurring. The City may terminate the Contract for cause based on repetitive non-compliance pursuant to Paragraph 27 of Exhibit A – Standard Purchase Terms & Conditions.

16. CORES

- A. The City will return cores within thirty (30) calendar days after installation of a new or rebuilt part.
- B. If the City does not return core(s) within thirty (30) calendar days, the Contractor must contact the Service Center Manager or designee, from where the part was delivered to request that the core be returned or to request reimbursement from the City for the Core(s) at the Contract rate. If the City pays for a core and later returns it to the Contractor, the City must be reimbursed.
- C. The City will not accept invoices for any core charges until thirty-one (31) calendar days after the installation of the new or rebuilt part.

17. WARRANTY REQUIREMENTS - PARTS

- A. The Contractor warrants that all parts are free from manufacturer defects in material and workmanship for a minimum of twelve (12) months or for the standard period as provided by the manufacturer, whichever is for the greatest length of time.
- B. The warranty period for all parts shall not start until the part is installed on a unit as evidenced by the City's work order or the Contractor's invoice for repairs. A copy of the manufacturer's parts warranty shall be provided to the Service Center Manager or their designee within five (5) calendar days of request by the City.
- C. The Contractor further warrants that the parts supplied under this Contract will not void existing vehicle/equipment or manufacturer's warranties.

18. WARRANTY REQUIREMENTS - SERVICES

- A. The Contractor warrants and represents that all services provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations. The warranty period shall be for a minimum of twelve (12) months from acceptance of the services.
- B. The warranty period shall not start until the part is installed on a unit as evidenced by the Contractor's invoice for repairs. A copy of the labor and associated parts warranties shall be provided to the Service Center Manager or their designee with each repair.

- 19. CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Department: Fleet Services

Hazel Black, Contract Management Supervisor

Phone: (512) 974-1751

Email: hazel.black@austintexas.gov

**EXHIBIT B
SUPPLEMENTAL PURCHASE PROVISIONS
PARTS AND REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND GOLF COURSE EQUIPMENT
MA 7800 NS170000038**

Department: Parks and Recreation Department

Michelle Walker, Contract Management Specialist I

Phone: (512) 974-6709

Email: michelle.walker@austintexas.gov

**EXHIBIT C
SCOPE OF WORK
PARTS & REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND LAWN EQUIPMENT
MA 7800 NS170000038**

1. PURPOSE

The Contractor shall fully and timely provide all deliverables related to providing Original Equipment Manufacturer (OEM) parts and repair services for Toro commercial turf and golf course equipment, including the Toro Groundsmaster series on an as-needed basis as specified herein.

Any services that have been omitted from this scope of work that are clearly necessary or in conformance shall be considered a requirement although not directly specified or called for in the scope of work.

2. DEFINITIONS

- 2.1. Stock Parts: high turnover parts that are most commonly needed by the City.
- 2.2. Non-Stock Parts: low usage, high dollar parts that are not kept in inventory.
- 2.3. Back-ordered (or Out-of-Stock) Parts: parts that are not currently in stock but have been ordered or will be ordered.
- 2.4. Code Red: a term used by the City to designate that the parts are critical to providing services to the public to the extent that the City is willing to pay expedited shipping charges.
- 2.5. Service Center: any City facility where vehicles are repaired or serviced.
- 2.6. Expedited Services: the City requires priority repair services for City-owned vehicles and/or equipment.
- 2.7. Off-shift hours: any hours other than Monday through Friday from 7:00 A.M. through 5:00 P.M. local time.
- 2.8. Repairs: to return or restore a broken, damaged, or failed part, vehicle, or piece of equipment to an acceptable operating or usable condition or state.
- 2.9. Special Order Items: parts that are hard to find such as parts for older vehicles that are no longer manufactured, parts that are made to order or new parts that have a limited supply.

3. CONTRACTOR QUALIFICATIONS

The Contractor shall:

- 3.1. Be a manufacturer's authorized representative for Toro commercial parts and shall have an operational repair facility regularly engaged in the business of providing the parts and repair services specified herein.
- 3.2. Be a manufacturer authorized warranty repair facility for the Toro commercial equipment and equipped with all tools, diagnostic equipment, and supplies necessary to repair and provide warranty services (when requested by the City).
- 3.3. Have a facility with adequate warehouse space and equipped with parts, supplies and equipment necessary to satisfy the requirements of the contract.
- 3.4. Maintain a storage area that is secure from vandalism or theft, for all City vehicles at the Contractor's location.
- 3.5. Have a minimum of two (2) service technicians, fully qualified to work on the Toro commercial equipment. The Contractor shall be able to verify that all service technicians have had sufficient training with a minimum of three (3) years hands-on experience within the last five (5) years working on the vehicles specified herein. Training certificates and/or documentation shall be provided to the City within five (5) calendar days after written request.

4. CONTRACTOR'S RESPONSIBILITIES FOR REPAIR SERVICES

**EXHIBIT C
SCOPE OF WORK
PARTS & REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND LAWN EQUIPMENT
MA 7800 NS170000038**

The Contractor shall:

- 4.1. Provide all labor, parts, equipment, materials, tools, supervision, and transportation required to perform repairs to City equipment according to the manufacturer's recommended repair techniques and standards.
- 4.2. Perform all repair services on the Contractor's premises.
- 4.3. Provide a point of contact for receiving orders from the City within five (5) working days after contract effective date, or at a time mutually agreed to between the Contractor and the Service Center Manager. A City representative from the City's Service Center will contact the Contractor by telephone, e-mail, or fax, to place an order for repairs.
- 4.4. Pick up and/or return all City equipment to and/or from the Contractor's premises where the repair services shall be completed, except as specified. Equipment in need of repair(s) shall be picked up within one (1) working day after notification and returned within one (1) working day after completion of the repair(s), or at a time mutually agreed to between the Contractor and the Service Center Manager or designee.
 - 4.4.1. On occasion, the City will provide transportation for equipment to the Contractor's premises. Upon completion of repairs, the Contractor shall deliver the equipment back to the City within one (1) working day after completion of the repair(s) unless otherwise specified in the delivery order.
- 4.5. Diagnose the equipment for repairs and provide a written cost estimate to the Service Center Manager or designee within two (2) working days after taking possession of the equipment, or at a time mutually agreed to between the Contractor and the Service Center Manager or designee. The written cost estimate shall include:
 - The cause of failure
 - The correction or repair needed
 - Estimated labor hours and cost
 - Description and cost of parts
 - Total cost to complete repair services
 - Total amount of time needed to complete repairs
 - The equipment identification number (license plate, VIN or unit number)
 - 4.5.1. The Service Center Manager or designee will provide written authorization (e.g. email) to proceed with the repairs after evaluating the estimate. Authorization will include a unique delivery order number. The Contractor shall not proceed with repairs based on verbal authorizations and assumes all liability and responsibility for repairs performed based on such verbal authorizations.
- 4.6. Submit a new cost estimate if the cost of the necessary repairs increases from the original cost estimate due to hidden damage. The new cost estimate shall list the additional repairs and costs and shall be submitted to the Service Center Manager or designee for written (e.g. email) approval prior to performing the hidden damage repairs.
- 4.7. Complete the repairs within the timeframe specified in the estimate after receipt of written approval to proceed with the repairs from the Service Center Manager or designee. If more time is required to complete the necessary repairs, the Contractor shall request an extension in writing (e.g. email) that includes the reason for the extension and the date repairs shall be completed by. The Service Center Manager or designee will approve the Contractor's request for extension in writing (e.g. email).
- 4.8. Expect the City to inspect the repairs for compliance with all contract requirements and to ensure repairs were completed in a satisfactory manner. If upon inspection the City detects deficiencies, the City may reject the repairs and the Contractor shall be required to make the necessary adjustments or correct the

**EXHIBIT C
SCOPE OF WORK
PARTS & REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND LAWN EQUIPMENT
MA 7800 NS170000038**

repairs at its own expense. This includes round trip transportation, if applicable. If corrective work is required, the Contractor shall arrange for pickup of the equipment within one (1) working day of notification. The Contractor shall complete corrective work within one (1) working day unless the Service Center Manager or designee approves additional time in writing (e.g. email).

- 4.9. Anticipate that the City may test and/or inspect all repairs during the term of the Contract. The City reserves the right to conduct any tests or inspections deemed necessary to ensure repairs and parts conform to the equipment manufacturer's specifications. Inspections completed by the City will not relieve the Contractor of its obligation to ensure all repairs, articles, materials, and parts are consistent with the equipment manufacturer's specifications, and are fit for their intended use.
- 4.10. Be responsible for any damage by the Contractor or Contractor's Subcontractor to City vehicles, equipment, buildings, and/or property. The Contractor shall repair any damage at its own expense.
- 4.11. Be responsible for risk of loss or damage to all equipment and/or parts in the care, custody, and control of the Contractor until accepted by the Service Center Manager or their designee.
- 4.12. The Contractor shall provide an itemized invoice to the Service Center Manager or their designee, upon completion of each repair. The invoice shall include the following information.
 - Date the City authorized repairs
 - List of repairs made
 - Date repairs were completed
 - Itemized list of parts and other products used for the repairs
 - Number of labor hours associated with the repairs
 - The equipment identification number (license plate, VIN, or unit number)
- 4.13. Return all non-usable cores to the Service Center Manager or designee, upon completion of each repair, if cores are applicable to the repair. The Contractor shall not charge the City for usable cores from City equipment repaired at the Contractor's facility.
- 4.14. Provide the parts removed during repair of the equipment for verification purposes upon request by the Service Center Manager or designee.
- 4.15. Properly recycle and/or dispose of hazardous waste, including used and contaminated lubricants and/or filters. Costs for recycling or disposal fees shall be factored into the pricing and not charged separately on an invoice.
 - 4.15.1. The Contractor shall provide, a copy of all documentation related to hazardous waste and the standard transportation manifest showing the proper disposition of all hazardous waste with each invoice.
- 4.16. Notify the Contract Manager and the Service Center Manager or designee of recall notices, warranty replacements, safety notices, or any applicable notice regarding all parts used. Failure to report this within fifteen (15) calendar days after receipt of notice may result in cancellation of the contract.
- 4.17. Provide a report monthly, yearly, or a mutually agreed upon schedule of all repairs performed for the City.
 - 4.17.1. The report shall itemize repairs by date, Service Center that placed the order, type of repair, cost for labor (including hours and rates), description and cost for parts, total cost of repair, and the repaired equipment identification number (license plate, VIN or unit number).
 - 4.17.2. The City prefers that the report be in an electronic format that may be sorted or other City-approved format.
- 4.18. Provide Expedited Services when specified in the delivery order.

**EXHIBIT C
SCOPE OF WORK
PARTS & REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND LAWN EQUIPMENT
MA 7800 NS170000038**

4.18.1. The Contractor may assess a flat dollar amount per equipment repair for Expedited Services as specified on Exhibit F - Pricing Sheet.

4.18.2. The Contractor shall note Expedited Services on the invoice when authorized by the City.

5. CONTRACTOR'S RESPONSIBILITIES FOR PARTS

5.1. All Parts

The Contractor shall:

5.1.1. Stock or have immediate access to a parts inventory sufficient to complete needed repairs and to fill stock orders 95% of the time within the timeframe stipulated in this Scope of Work.

5.1.2. Provide OEM parts. If OEM parts are not available, any parts that are not OEM shall be approved by the Service Center Manager or designee in writing (e.g., email), and shall be equivalent to or better than the manufacturer's parts originally installed on the respective equipment.

5.1.3. Provide new parts, except for core components on renewed assemblies. Parts shall meet all applicable federal, state and local requirements for quality and safety.

5.1.2.1. Used, factory seconds, shopworn, demonstrator, prototype, and discontinued parts or materials are not acceptable.

5.1.2.2. Remanufactured or rebuilt parts may be used if new parts are not available or if the City requests them in writing (e.g. email).

5.1.2.3. Any remanufactured or rebuilt parts must be approved by the Service Center Manager or designee in writing (e.g., email), and shall be equivalent to or better than the manufacturer's parts originally installed on the respective equipment.

5.1.4. Notify the Contract Manager and the Service Center Manager or designee of recall notices, warranty replacements, safety notices, or any applicable notice regarding all parts sold. Failure to report this within fifteen (15) calendar days after receipt of notice may result in cancellation of the contract.

5.1.5. Ensure the warranty for parts and repairs shall include pick up and return of the equipment, removal of the defective part and installation of the replacement part at no additional cost for repairs performed by the Contractor. For repairs performed by the City, the warranty shall include pickup of the defective part and delivery of the replacement part at no additional cost.

5.1.6. Provide, with each delivery, a Shipping or Delivery ticket showing the description of each item, quantity, and unit price.

5.2. Parts Associated with Repairs

The Contractor shall:

5.2.1. Provide a copy of the manufacturer's parts warranty to the Service Center Manager or designee with each delivery.

5.2.2. Provide a report monthly, yearly, or a mutually agreed upon schedule of all parts associated with repairs purchased by each City department. The report shall itemize parts by date installed, invoice number, part number, part description, price per part, Service Center that placed the order, and the total dollar amount for all parts purchased. The City prefers that the report be in an electronic format that may be sorted or other City-approved format.

**EXHIBIT C
SCOPE OF WORK
PARTS & REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND LAWN EQUIPMENT
MA 7800 NS170000038**

5.3. Parts for the City's Inventory

The Contractor shall:

- 5.3.1. Understand that City inventory parts shall be ordered on an as-needed basis.
- 5.3.2. Maintain a stock level equivalent to two (2) week supply of inventory, which shall be mutually agreed to between the Contractor and the Material Control Manager after Contract award. Any changes to the stock level list shall be mutually agreed upon between the Contractor and the Material Control Manager in writing.
- 5.3.3. Provide a copy of the manufacturer's parts warranty to the Service Center Manager or designee within five (5) calendar days of request by the City.
- 5.3.4. Provide a point of contact for receiving orders from the City to the City's Contract Manager within five (5) working days after contract effective date, or at a time mutually agreed to between the Contractor and the Contract Manager. A City representative from the City's Service Center will contact the Contractor by telephone, e-mail, or fax, to place an order for parts.
 - 5.3.6.1. The order shall include the part number, part description, quantity, delivery requirements and a unique delivery order number
 - 5.3.6.2. The Contractor shall confirm the quantity to be shipped to the ordering Service Center representative by telephone, email or fax within two (2) hours after the order is placed
- 5.3.5. Ship complete orders for parts unless arrangements for partial shipments are made in advance. The Contractor shall provide, with each delivery, an invoice showing the part number, description, quantity, and unit price for each item.
- 5.3.6. Deliver Stock Parts to the ordering Service Center based on the following:
 - 5.3.6.1 Parts ordered before 10:00 A.M. shall be delivered to the ordering Service Center no later than 5:00 P.M. the same working day the order is placed.
 - 5.3.6.2 Parts ordered after 10:00 A.M. shall be delivered before noon the next working day after the order is placed.
 - 5.3.6.3 The City will not pay shipping costs to obtain stock parts that the Contractor does not have in inventory at the time the City places the order.
- 5.4 Deliver Non-Stock Parts to the ordering Service Center within three (3) working days after a Service Center places an order. If delivery cannot be made as specified, the Contractor shall notify the ordering Service Center and provide an estimated delivery date.
- 5.5 Deliver Code Red orders within one (1) to two (2) working days as specified in the order.
 - 5.5.1. The delivery order will specify Code Red and the number of days when authorized by the City.
 - 5.5.2. The Contractor shall include the term "Code Red" on invoices when the City authorizes and specifies Code Red on the delivery order.
 - 5.5.3. The Contractor may assess an expedited shipping charge (e.g. FedEx, UPS, Priority Mail...) for any Code Red orders placed by the City.
 - 5.5.3.1. The Contractor shall provide a written receipt from the shipper showing the actual expedited costs for all Code Red shipments without any additional markups.

**EXHIBIT C
SCOPE OF WORK
PARTS & REPAIR SERVICES FOR
TORO COMMERCIAL TURF AND LAWN EQUIPMENT
MA 7800 NS170000038**

- 5.6 Honor all Special Order Items under the Contract pricing, without any additional markups.
- 5.7 Deliver Back-ordered or Out-of-Stock parts to the Service Center within five (5) working days after the order is placed. The Contractor shall notify the ordering Service Center representative of when the part(s) will be available by telephone, email or fax within two (2) hours after the order is placed. If the Contractor cannot provide the backordered part within five (5) working days, the City reserves the right to purchase the part on the open market.

6 WORK HOURS

The City will not pay additional charges for repairs and/or services performed during off-shift hours.

7. MILEAGE

Mileage is not reimbursable, and the Contractor shall not bill for mileage. However, the Contractor may charge one flat fee as indicated on Exhibit F - Price Sheet, for pickup and delivery of City equipment for repair on the Contractor's premises.

EXHIBIT D
City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment,

recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 23 day of June, 2017

CONTRACTOR

Authorized
Signature

Title

Professional TAFE Provider
[Signature]
GR Sales Coordinator

EXHIBIT E
City of Austin, Texas
Section 0805
NON-SUSPENSION OR DEBARMENT CERTIFICATION

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. Covered transactions include procurement contracts for goods or services equal to or in excess of \$25,000.00 and all non-procurement transactions. This certification is required for all Vendors on all City of Austin Contracts to be awarded and all contract extensions with values equal to or in excess of \$25,000.00 or more and all non-procurement transactions.

The Offeror hereby certifies that its firm and its principals are not currently suspended or debarred from bidding on any Federal, State, or City of Austin Contracts.

Contractor's Name:

Professional TAFE Products

Signature of Officer or
Authorized
Representative:

CS Spillman

Date:

June 23, 2017

Printed Name:

CE ORGE Spillman

Title

SR. Sales Coordinator



City of Austin FSD Purchasing Office

Certificate of Exemption

DATE: 12/19/2016

DEPT: Fleet Services

TO: Purchasing Officer or Designee

FROM: Hazel Black

BUYER: Marian Moore

PHONE: (512) 974-1751

Chapter 252 of the Local Government Code requires that municipalities comply with the procedures established for competitive sealed bids or proposals before entering into a contract requiring an expenditure of \$50,000 or more, unless the expenditure falls within an exemption listed in Section 252.022.

Senate Bill 7 amended Chapter 252 of the Local Government Code to exempt from the requirements of such Chapter expenditures made by a municipally owned electric utility for any purchases made by the municipally owned electric utility in accordance with procurement procedures adopted by a resolution of its governing body that sets out the public purpose to be achieved by those procedures. The Austin City Council has adopted Resolution No. 040610-02 to establish circumstances which could give rise to a finding of critical business need for Austin Energy.

This Certification of Exemption is executed and filed with the Purchasing Office as follows:

1. The undersigned is authorized to submit this certification.
2. The undersigned certifies that the following exemption is applicable to this purchase. (Please check which exemption you are certifying)
 - ☐ a procurement made because of a public calamity that requires the immediate appropriation of money to relieve the necessity of the municipality's residents or to preserve the property of the municipality
 - ☐ a procurement necessary to preserve or protect the public health or safety of municipality's residents
 - ☐ a procurement necessary because of unforeseen damage to public machinery, equipment, or other property
 - ☐ a procurement for personal, professional, or planning services
 - ☐ a procurement for work that is performed and paid for by the day as the work progresses
 - ☐ a purchase of land or right-of-way
 - ☒ a procurement of items available from only one source, including: items that are available from only one source because of patents, copyrights, secret processes, or natural monopolies; films, manuscripts, or books; gas, water, and other utility services; captive replacement parts or components for equipment; books, papers, and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials; and management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits
 - ☐ a purchase of rare books, papers, and other library materials for a public library
 - ☐ paving, drainage, street widening and other public improvements, or related matters, if at least one-third of the cost is to be paid by or through special assessments levied on property that will benefit from the improvements
 - ☐ a public improvement project, already in progress, authorized by voters of the municipality, for which there is a deficiency of funds for completing the project in accordance with the plans and purposes as authorized by the voters

- ☐ a payment under a contract by which a developer participates in the construction of a public improvement as provided by Subchapter C, Chapter 212
- ☐ personal property sold: at an auction by a state licensed auctioneer; at a going out of business sale held in compliance with Subchapter F, Chapter 17, Business & Commerce Code; by a political subdivision of this state, a state agency of this state, or an entity of the federal government; or under an interlocal contract for cooperative purchasing administered by a regional planning commission established under Chapter 391
- ☐ services performed by blind or severely disabled persons
- ☐ goods purchased by a municipality for subsequent retail sale by the municipality
- ☐ electricity
- ☐ advertising, other than legal notices
- ☐ Critical Business Need (Austin Energy Only)

3. The following facts as detailed below support an exemption according to Section 252.022 of the Local Government Code for this purchase. Please verify the steps taken to confirm these facts. If you are citing the following exemptions, please provide the additional information requested below. A more detailed explanation of these exemptions is attached.

- **Preserve and Protect the Public Health and Safety** – Describe how this purchase will preserve and protect the public safety of residents.
- **Sole Source** – Describe what patents, copyrights, secret processes, or natural monopolies exist. Attach a letter from vendor supporting the sole source. The letter must be on company letterhead and be signed by an authorized person in company management.
- **Personal Services** – Describe those services to be performed personally by the individual contracted to perform them.
- **Professional Services** – Describe what mainly mental or intellectual rather than physical or manual and/or disciplines requiring special knowledge or attainment and a high order of learning, skill, and intelligence are required to perform this service.
- **Planning Services** – Describe the services primarily intended to guide governmental policy to ensure the orderly and coordinated development of the state or of municipal, county, metropolitan, or regional land areas.
- **Critical Business Need** – Describe the procurement necessary to protect the competitive interests or position of Austin Energy.

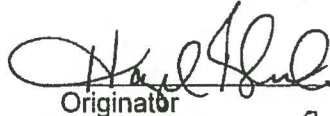
Request a MA for estimated \$590,965.00, over a five-year period with Professional Turf Products 1010 N. Industrial Blvd., Euless TX. 817-785-1937 to provide OEM parts and service for all City owned Toro Commercial Turf Equipment. Professional Turf and their other various locations through out Texas, Oklahoma, and Kansas is the sole source for Toro Commercial Turf Equipment, parts, service and Toro Golf course irrigation products for this geographic area.

4. Please attach any documentation that supports this exemption.
5. Please provide any evaluation conducted to support the recommendation. Include the efforts taken to ensure the selected vendor is responsible and will provide the best value to the City (Ex: Evaluation of other firms, knowledge of market, etc).

Professional Turf Products is the sole source for Toro Commercial Turf Equipment, parts, service and Toro golf course irrigation products for this geographic area. There are no other authorized distributors for Toro Turf Equipment in the Austin area. To ensure optimum performance and continued safety certification of the machine, use only genuine Toro replacement parts and accessories. Replacement parts and accessories made by other manufacturers could be dangerous, and such use will void the product warranty.

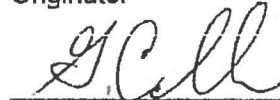
6. Because the above facts and documentation support the requested exemption, the City of Austin intends to contract with Professional Turf Products 1010 N. Industrial Blvd Euless, TX 76029 which will cost approximately \$ 590,965.00 (Provide estimate and/or breakdown of cost).


Recommended
Certification

 12-12-16
Originator Date

*John
Ward*

Approved
Certification

 12/19/16
Department Director or designee Date

 12/19/16
Assistant City Manager or General Manager Date
or designee (if applicable)

Purchasing Review
(if applicable)

 1/10/17
Buyer Date


Manager Initials

Exemption Authorized
(if applicable)

 1/10/17
Purchasing Officer or designee Date

02/07/2013

CERTIFICATE OF INTERESTED PARTIES

FORM 1295

1 of 1

Complete Nos. 1 - 4 and 6 if there are interested parties.
Complete Nos. 1, 2, 3, 5, and 6 if there are no interested parties.

OFFICE USE ONLY CERTIFICATION OF FILING

1 Name of business entity filing form, and the city, state and country of the business entity's place of business.

Professional Turf Products, LP
Eules, TX United States

Certificate Number:
2017-229057

Date Filed:
06/27/2017

Date Acknowledged:

2 Name of governmental entity or state agency that is a party to the contract for which the form is being filed.

City of Austin

3 Provide the identification number used by the governmental entity or state agency to track or identify the contract, and provide a description of the services, goods, or other property to be provided under the contract.

MA 7800 NS170000038

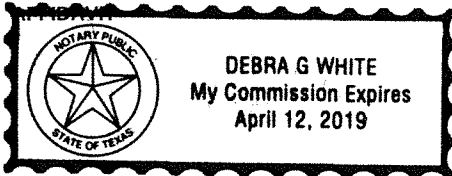
Commercial mowing and related grounds maintenance equipment, large turf irrigation, pump station equipment and all related parts and service

4	Name of Interested Party	City, State, Country (place of business)	Nature of interest (check applicable)	
			Controlling	Intermediary

5 Check only if there is NO Interested Party.



6 I swear, or affirm, under penalty of perjury, that the above disclosure is true and correct.



David Lan
Signature of authorized agent of contracting business entity

AFFIX NOTARY STAMP / SEAL ABOVE

Sworn to and subscribed before me, by the said David Lan, this the 27th day of June, 2017, to certify which, witness my hand and seal of office.

Debra G White
Signature of officer administering oath

Debra G White
Printed name of officer administering oath

Notary
Title of officer administering oath